

The sale of tangible personal property for the purpose of resale is not taxable so long as the seller obtains a Certificate of Resale in accordance with 86 Ill. Adm. Code 130.1405. (This is a GIL.)

February 27, 2002

Dear Xxxxx:

This letter is in response to your letter dated November 28, 2001 that we received on December 17, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA is a third party logistics provider serving manufacturers and reseller's in the region. As part of this service we purchase and utilize packaging and shipping supplies necessary to ship our customer's products to their customers. AAA never takes title to the inventory. All product moved through our facilities is for resale. The supplies include; pallets, stretch wrap, carry-strap and labeling which is consumed in delivering the product.

My question relates to the exemption of sales tax under Ill. Adm. Code 130.2070 (b)(1). Is AAA exempt from collecting and paying sales tax on such supplies since the packaging ultimately becomes part of the tangible personal property transferred to the final customer?

I appreciate your assistance and direction in resolving this matter.

You are inquiring about the "resale" exemption from sales tax set out in 86 Ill. Adm. Code 130.2070(b)(1). When sellers transfer ownership of packaging materials or containers to customers together with the ownership of the tangible personal property contained within, such packaging materials or containers may be purchased tax-free as purchases for resale, 86 Ill. Adm. Code 130.2070. Purchases of pallets or shrink wrap can qualify for resale status if their ownership is transferred to customers along with the property contained on them. Purchases of the wrap and wood used to make such pallets can be nontaxable if all ownership rights to the pallets or wraps are unequivocally transferred to the final customers. If sellers reuse pallets or if sellers discard them after delivery, their purchases by sellers would be taxable. See Section 130.2070(c). Similarly, if the carry-straps you mention are reused by sellers or are not transferred unequivocally to the final customers, they would be taxable.

The information contained in your letter contains assertions that your packaging and shipping supplies become a part of an item of tangible personal property that will be sold to the final customer (i.e. your customer's customer). Assuming that this is the case, and all ownership rights to the pallets or shrink wrap are transferred to your customer's customer, the resale exemption could apply.

Labels which list information for customer use such as product ingredients, or cooking or storage information, are considered to be part of the packaging and may be purchased for resale pursuant to Section 130.2070(b)(1). However, labels that are primarily for the benefit of the seller of the item are taxable. For example, pricing labels and bar code labels are primarily for the benefit of the seller and therefore are subject to tax.

The work you perform for customers as described in your letter is a sale of service. Sales of service that involve the transfer of tangible personal property are subject to tax liability under the Service Occupation Tax Act or Use Tax Act.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1. separately stated selling price; 2. 50% of serviceman's entire bill; 3. SOT on his cost price if he is a registered de minimis serviceman; or, 4. Use Tax on his cost price if he is an unregistered de minimis serviceman that is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Please see 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. A serviceman who incurs Service Occupation Tax on his selling price should provide Certificates of Resale to his suppliers when purchasing tangible personal property that will be transferred to service customers. Please refer to 86 Ill. Adm. Code 140.106, enclosed.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109, enclosed. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers

are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108, enclosed. These de minimis servicemen do not provide Certificates of Resale to suppliers.

We cannot tell from your letter how you are required to satisfy your liability. If it would be under one of the first three methods, you could provide your supplier with a resale certificate and obtain a resale certificate from your customer, assuming all ownership rights to the pallets or wraps are unequivocally transferred to your customer's customer, to document the non-taxable nature of the transactions. If you are de minimis and not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act, you would owe use Tax liability to your supplier. A resale exemption would not be appropriate in this situation because you would be the "user" of the materials.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.